

**THE VILLAGE OF DEXTER
CITY CHARTER COMMISSION**

Wednesday, December 18, 2013

******* 6:30 pm – Regular Meeting *******

COPELAND BOARD ROOM – 7714 ANN ARBOR STREET

A. CALL TO ORDER/ROLL CALL/PLEDGE OF ALLEGIANCE

B. APPROVAL OF AGENDA

C. APPROVAL OF THE MINUTES

1. Regular Meeting – December 11, 2013

D. PRE-ARRANGED PARTICIPATION

The Commission would like to encourage public comment while remaining within established time limits. Pre-arranged participation will be limited to those who notify the Village office before 5:00 p.m. the Monday preceding the meeting, stating name, intent and time requirements. Comments related to public hearings on the agenda will not be permitted at this time. This section is limited to 5-minutes per participant or 10-minutes for group representatives. This section will also include presentations by invited guests/consultants and written communications received by the Commission.

E. PUBLIC HEARINGS

Those addressing the Commission will state their name, and address. This section is limited to 5-minutes per participant or 10-minutes for group representatives.

None

F. CHARTER CONSTRUCTION – SECOND READINGS

Discussion and consideration of the current draft of the chapter.

1. Discussion of: Article I - Powers of the City

G. CHARTER CONSTRUCTION – FIRST READINGS

Discussion of each chapter of the draft charter. When general agreement is reached it will be presented under "second readings".

1. Discussion of: Article II - City Council (continued from December 11)

H. OTHER ITEMS AS REQUESTED BY COMMISSIONERS

"This meeting is open to all members of the public under Michigan Open Meetings Act."

www.DexterMI.gov

1. Consideration of: Draft Budget

I. AGENDA PREPARATION FOR THE NEXT MEETING

J. NON-ARRANGED PARTICIPATION

Those addressing the Commission will state their name, and address. This section is limited to 5-minutes per participant or 10-minutes for group representatives.

K. ADJOURNMENT

Adjournment will be at or before 8:30 p.m. unless a continuation is ordered by a majority vote of the Commission.

List of Draft Chapters Completed

Chapter	Date Voted On
Preamble	December 11, 2013

**THE VILLAGE OF DEXTER
CITY CHARTER COMMISSION
WEDNESDAY, DECEMBER 11, 2013**

A. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

The meeting was called to order at 6:30 PM by Chairman Hansen at the Copeland Board Room located at 7714 Ann Arbor Street in Dexter, Michigan.

B. ROLL CALL: Phil Arbour, Jack Donaldson, John Hansen, Phillip Mekas, Mary-ellen Miller, Thom Phillips, Michael Raatz, and James Smith. Absent – Matt Kowalski. (Arrived at 6:40 PM)

Also present: Courtney Nicholls, Assistant Village Manager; Carol Jones, Village Clerk; Shawn Keough, Village President; and Joe Semifero, Village Trustee.

C. APPROVAL OF THE AGENDA

Motion James Smith; support Phillip Mekas to approve the agenda for December 11, 2013.

Motion Jack Donaldson; support Jim Smith to amend the agenda to include Village President, Shawn Keough in the Prearranged Participation section of the agenda. Unanimous voice vote approval.

Original motion by James Smith; support Phillip Mekas to approve the agenda as amended for December 11, 2013. Unanimous voice vote approval.

D. APPROVAL OF THE MINUTES

1. Regular Meeting – December 11, 2013

Motion James Smith; support Jack Donaldson to approve the minutes of the Regular Meeting of December 4, 2013 as presented. Unanimous voice vote approval.

E. PREARRANGED PARTICIPATION

Village President – Shawn Keough

Mr. Keough thanked all of the commissioners for serving on the Charter Commission. Mr. Keough mentioned that many residents have asked him what is going to change should Dexter become a city. He feels that we would like to maintain much of what

we currently have in place and put these items into the charter such as size of the council and the tax structure.

F. PUBLIC HEARINGS

None

Motion Phil Arbour; support James Smith to make a change in the agenda and move Charter Construction -Second Readings ahead of Charter Construction – First Readings.

Unanimous voice vote approval.

G. CHARTER CONSTRUCTION – SECOND READINGS

1. Discussion of: Charter Preamble

Motion Phil Arbour; support Phillip Mekas to adopt the draft of the Charter Preamble with the capitalization of the words city and state in the second line.

Unanimous voice vote approval

2. Discussion of: Article I - Powers of the City

Discussion followed as what to include or limit as the powers of the city. Questions were raised regarding legal references, name of the city, listing of boundaries, and where to include wards/districts.

Motion Phil Arbour; support James Smith to table the approval of this section until next week with a review by the attorney.

Unanimous voice vote approval

H. CHARTER CONSTRUCTION – FIRST READINGS

1. Discussion of: Article II – City Council

Motion Phillip Mekas; support James Smith to approve for the first reading Section 2.01 - General Powers and Duties which reads as follows:

All powers of the city shall be vested in the city council, except as otherwise provided by law or this charter, and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the city by law.

Unanimous voice vote approval.

Motion Phillip Mekas; support Phil Arbour to approve the first reading of Section 2.02(a) - Eligibility which reads as follows:

Only registered voters of the city by the date of filing of petition shall be eligible to hold the office of council member or mayor.

Unanimous voice vote approval

Motion by James Smith; support Phillip Mekas to approve the first reading of Section 2.02(b) - Terms which reads as follows:

The term of office of elected officials shall be four years elected in accordance with Article VI.

Unanimous voice vote approval.

Motion James Smith; support Phillip Mekas to approve the first reading of Section 2.02(c) – Composition, Alternative I option B which reads as follows:

The council shall be composed of 6 members elected by the voters of the city at large in accordance with provisions of Article VI. The mayor shall be elected as provided in Section 2.03(b), Alternative II.

Unanimous voice vote approval.

Motion James Smith; support Phillip Mekas to approve the first reading of Section 2.03 (a) – Mayor – Powers and Duties to read as follows:

The mayor shall be a voting member of the city council and shall attend and preside at meetings of the council, represent the city in intergovernmental relationships, appoint with the advice and consent of the council the members of citizen advisory boards, committees, authorities and commissions, appoint the members and officers of council committees, assigns agenda items to committees subject to the consent of council, and perform other duties specified by the council. The mayor shall be recognized as head of the city government for all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties.

Unanimous voice vote approval

Motion James Smith; support Phil Arbour to approve the first reading of Section 2.03 (b) – Election, Alternative II – Mayor Elected At Large which reads as follows:

At a regular election the voters of the city shall elect a mayor at large for a term of 4 years. The council shall elect from among its members a mayor pro-tem who shall act as mayor during the temporary absence or disability of the mayor.

Unanimous voice vote approval

I. OTHER ITEMS AS REQUESTED BY COMMISSIONERS

1. Consideration of: Final Approval of the Rules of Procedure

Motion Jack Donaldson; support Matt Kowalski to approve the Rules of Procedure.

Unanimous voice vote approval

2. Consideration of: Commissioner Raatz – Proposed Press Release

Motion Mike Raatz; support James smith to authorize Mike and Ms. Nicholls to publish the prepared letter in the various resources used by the Village.

Unanimous voice vote approval

3. Consideration of: Draft Budget (if prepared)

No action at this time

J. AGENDA PREPARATION FOR THE NEXT MEETING

1. Move forward with Section 2.04
2. Consideration of: Draft Budget

K. NON-ARRANGED PARTICIPATION

None

L. ADJOURNMENT

Motion James Smith; support Phillip Mekas to adjourn at 8:32 PM.
Unanimous voice vote approval.

Respectfully submitted,

Carol J. Jones
Clerk, Village of Dexter

Approved for Filing:_____

Article 1

POWERS OF THE CITY

Section 1.01 Power of the City

The city shall have all powers possible for a city to have under the constitution and laws of the state as fully and completely as though they were specifically enumerated in this charter.

Section 1.02 Construction

The powers of the city under this charter shall be construed liberally in favor of the city, and the specific mention of particular powers in the charter and shall not be construed as limiting in any way the general power granted in this article.

Section 1.03 Intergovernmental Relations

The city may participate by contract or otherwise with any governmental entity of this state or any other state or states or the United States in the performance of any activity which one or more of such entities has the authority to undertake.

CHAPTER I

NAME AND BOUNDARIES

Section 1.1 NAME

The Municipal Corporation now existing and known as the Village of Caro shall continue as a body corporate and shall henceforth be known as and include the territory constituting the City of Caro, Tuscola County, State of Michigan, on the effective date of this charter.

Section 1.2 BOUNDARIES

- (a) The City shall embrace the territory comprising the existing Village of Caro on the effective date of this charter and additional tracts of land situated in the Townships of Almer and Indianfields in the county of Tuscola as described in a certified copy of the FINAL ORDER OF THE STATE BOUNDARY COMMISSION approving the incorporation of the territory described therein on July 15, 2007, together with such annexations and less such detachments as may be made thereafter. Upon annexation or detachment of territory, the boundaries shall be deemed changed without amendment to this section.
- (b) The clerk shall maintain and keep available in the clerk's office for public inspection the legal description and map of the current boundaries of the City.

Section 1.3 WARDS

The city shall consist of one single ward.

CHAPTER II

GENERAL MUNICIPAL POWERS

Section 2.1 GENERAL POWERS

The City of Caro and its officers shall be vested with any and all powers and immunities, expressed and implied, which cities are or hereafter may be permitted to exercise or provide for in their charters under the Constitution and statutes mandated by the State of Michigan. It shall include all the powers of cities as fully and completely as though those powers and immunities were specifically enumerated in and provided for in this charter. In no case shall any enumeration of particular powers or immunities in this charter be held to be exclusive.

Section 2.2 ADDITIONAL POWERS OF THE CITY

- (a) The city and its officers shall have power to exercise all municipal powers in managing and controlling municipal property and in administering the municipal government, whether such powers are expressly enumerated or not; to do any act to advance the interests of the city, the good government, and prosperity of the municipality and its residents, and through its regularly constituted authority, to pass and enforce all ordinances relating to its municipal concerns, subject to the Constitution and laws of the State of Michigan and the provisions of this charter.
- (b) The city may condemn property if such exercise of power would serve a public necessity according to the authority granted to the City of Caro and governed by the statutes and the Constitution of the State of Michigan and this charter.

Section 2.3 INTERGOVERNMENTAL RELATIONS

The city may join with any municipal corporation or with any other unit or agency of government, whether local, state or federal, or with any number of combinations thereof, by contract or otherwise, as may be permitted by law, in the ownership, operation, or performance, jointly or by one or more on behalf of all, of any property, facility or service which each would have the power to own, operate or perform separately.

Section 2.4 INTERPRETATION OF GENERAL POWERS

The powers of the city under this charter shall be construed liberally in favor of the city, and the specific mention of particular powers in the charter shall not be construed as limiting in any way the general power granted in this section.

CHAPTER I

NAME AND BOUNDARIES

Section 1.1 NAME

The Municipal Corporation now existing and known as the Village of Chelsea shall continue as a body corporate and shall henceforth be known as and include the territory constituting the City of Chelsea, Washtenaw County, State of Michigan, on the effective date of this charter.

Section 1.2 BOUNDARIES

- a) The City shall embrace the territory comprising the existing Village of Chelsea on the effective date of this charter and additional tracts of land situated in the Townships of Sylvan and Lima in the county of Washtenaw as described in a certified copy of the FINAL ORDER OF THE STATE BOUNDARY COMMISSION approving the incorporation of the territory described therein on June 25, 2002, together with such annexations and less such detachments as may be made thereafter. Upon annexation or detachment of territory, the boundaries shall be deemed changed without amendment to this section.
- b) The clerk shall maintain and keep available in the clerk's office for public inspection the legal description and map of the current boundaries of the City.

Section 1.3 WARDS

The city shall consist of one single ward.

CHAPTER II

GENERAL MUNICIPAL POWERS

Section 2.1 GENERAL POWERS

The City of Chelsea and its officers shall be vested with any and all powers and immunities, expressed and implied, which cities are or hereafter may be permitted to exercise or provide for in their charters under the Constitution and statutes mandated by the State of Michigan. It shall include all the powers of cities as fully and completely as though those powers and immunities were specifically enumerated in and provided for in this charter. In no case shall any enumeration of particular powers or immunities in this charter be held to be exclusive.

Section 2.2 ADDITIONAL POWERS OF THE CITY

- a) The city and its officers shall have power to exercise all municipal powers in managing and controlling municipal property and in administering the municipal government, whether such powers are expressly enumerated or not; to do any act to advance the interests of the city, the good government, and prosperity of the municipality and its residents, and through its regularly constituted authority, to pass and enforce all laws relating to its municipal concerns, subject to the constitution and laws of the State of Michigan and the provisions of this charter.
- b) The city may condemn property if such exercise of power would serve a public necessity according to the authority granted to the City of Chelsea and governed by the Constitution and statutes of the State of Michigan and this charter.

Section 2.3 INTERGOVERNMENTAL RELATIONS

The city may join with any municipal corporation or with any other unit or agency of government, whether local, state or federal, or with any number of combinations thereof, by contract or otherwise, as may be permitted by law, in the ownership, operation, or performance, jointly or by one or more on behalf of all, of any property, facility or service which each would have the power to own, operate or perform separately.

Section 2.4 CONSTRUCTION

The powers of the city under this charter shall be construed liberally in favor of the city, and the specific mention of particular powers in the charter shall not be construed as limiting in any way the general power granted in this section.

Article II CITY COUNCIL

Introduction.

The city council, elected by, representative of, and responsible to the citizens of the city is the fundamental democratic element of the council-manager plan.

Section 2.01. General Powers and Duties.

All powers of the city shall be vested in the city council, except as otherwise provided by law or this charter, and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the city by law.

Commentary.

This section does not specifically enumerate the powers of the council. An enumeration of specific powers in this article will not enlarge the powers of the council and may operate to diminish them if utilized by the courts to support restrictive interpretations (see commentary to § 1.02).

In his commentary on the first *Model City Charter* endorsing the council-manager plan ("The City Council" in *The New Municipal Program*, 1919), William Bennet Munro noted that

"So far as the composition and powers of the city council are concerned the plan set forth in the *Model City Charter* rests upon the conviction that there should be a place in the municipal framework for a body which will be avowedly deliberative, supervisory, and policy-determining, which will be wieldy enough to perform these functions properly and yet large enough to be truly representative of the community's options. . . . The *Model City Charter* accordingly provides for a council with a membership which can be enlarged or contracted according to the varying size and needs of different cities. This council is to be the pivot of the municipal system. It is to be the final source of local authority, not sharing its powers but delegating some of them. That is to say, to a city manager chosen by the council and holding office during the council's pleasure, it assigns the entire charge of administrative affairs . . . As for the powers of the city council . . . It is designed to embody, as it were, the sovereignty of the community. It is the legislative organ of the city exercising all the authority which the municipal corporation possesses—with one important exception only. This restriction is that the city council, once it selects a city manager, devolves all direct administrative authority upon him."

Recognizing that all of the powers that can be exercised by the city rest in the popularly elected city council, the charter must provide for a council, which is truly representative of the community. Therefore, the *Model* presents several alternatives without expressing an absolute preference for any one, which was done in earlier editions. Each city's population pattern—economic level, racial, ethnicity, geographical, etc.—has implication for the method of electing the council to assure equitable representation. While the Voting Rights Act governs all jurisdictions, in some cities the problem of compliance with its provisions and avoidance of court challenges is a matter of particular concern. Just as there is no absolute model for providing

competent and effective legislators, there is no absolute pattern which will assure equitable representation.

As the body charged with making municipal policy, the council can create permanent or ad hoc mechanisms to assist in that process. For example, it can create planning and recreation boards or study committees. Likewise it can create agencies with quasi-legislative or quasi-judicial status, such as a human rights commission or a zoning appeals board.

The *Model* makes no provision for specific instrumentalities designed to provide input at the neighborhood level for policy-making or service delivery evaluation. Nor does it list as charter agencies any advisory boards and commissions. The council has the power to establish such agencies.

The *Model* provides that the mayor, however elected, shall be the presiding officer and a voting member of the council and shall perform certain specific duties which will enhance the mayor's role as policy leader.

Section 2.02. Eligibility, Terms, and Composition.

(a) Eligibility. Only registered voters of the city shall be eligible to hold the office of council member or mayor.

Commentary.

This section does not include length of residence requirements for city council candidates. In an era of great mobility in which people frequently live in one place and work in another, length of residence requirements lose what little validity they may once have had. A prospective council member need only be a registered voter of the city.

(b) Terms. The term of office of elected officials shall be four years elected in accordance with Article VI.

Commentary.

The *Model* recommends four-year, staggered terms (§ 6.03). Under this approach, elections of council members take place every two years. In the seventh edition, the *Model* listed concurrent terms as an alternative. However, a strong majority of cities today—82.6% of cities surveyed according to the 2001 ICMA Form of Government Survey—have chosen staggered terms over concurrent terms to avoid dramatic changes in council composition at each election.

The *Model* does not restrict reelection to subsequent four-year terms. Limiting reelection restricts the citizens' opportunity to keep in office council members of whom they approve. Unlimited terms allow voters to provide a vote of confidence for council members who represent majority sentiment and a vote of opposition for members in the minority. Finally, the city benefits from the institutional memory of reelected council members.

(c) Composition. There shall be a city council composed of [] members [see alternatives below].

Commentary.

The *Model* does not specify the exact number of council members but recommends that the council be small – ranging from five to nine members. If the mayor were elected by and from the council (§ 2.03(b), Alternative I), there would be an odd number of council members. In the largest cities, a greater number of council members may be necessary to assure equitable representation. However, smaller city councils are more effective instruments for the development of programs and conduct of municipal business than large local legislative bodies. In the United States, it has been an exceptional situation when a large municipal council, broken into many committees handling specific subjects, has been able to discharge its responsibilities promptly and effectively. In large councils, members usually represent relatively small districts with the frequent result that parochialism and “log-rolling”—bargaining for and exchanging votes on a quid pro quo basis—distract attention from the problems of the whole city.

In determining the size of the council, charter drafters should consider the diversity of population elements to be represented and the size of the city.

Alternative I – Option A – Council Elected At Large; Mayor Elected by the Council

The council shall be composed of [odd number] members elected by the voters of the city at large in accordance with provisions of Article VI. The mayor shall be elected as provided in § 2.03(b), Alternative I.

Alternative I – Option B – Council Elected At Large; Mayor Elected Separately

The council shall be composed of [even number] members elected by the voters of the city at large in accordance with provisions of Article VI. The mayor shall be elected as provided in § 2.03(b), Alternative II.

Commentary.

The *Model* continues to stress the value of the at-large principle in designing the composition of a city council, while recognizing the necessity of providing for representation of geographical areas under certain circumstances. In considering the appropriateness of using the at-large system, each city must assess its own situation. The at-large system has generally allowed citizens to choose council members best qualified to represent the interests of the city as a whole.

Nevertheless, in larger cities, citizens may feel isolated from and unconnected to their government without some geographical basis of representation. Cities with significant differences in or conflicts among ethnic, racial, or economic groups may wish to consider whether one of the alternative systems may achieve more equitable representation of the city's population and avoid legal challenges under the Voting Rights Act without sacrificing council effectiveness.

Alternative II – Option A – Council Elected At Large with District Residency Requirement; Mayor Elected by the Council

The council shall be composed of [odd number] members elected by the voters of the city at large in accordance with provisions of Article VI. Not more than one council member shall reside in each district. The mayor shall be elected as provided in § 2.03(b),

Alternative I.

Alternative II – Option B – Council Elected At Large with District Residency Requirement; Mayor Elected Separately

The council shall be composed of [even number] members elected by the voters of the city at large in accordance with provisions of Article VI. Not more than one council member shall reside in each district. The mayor shall be elected as provided in § 2.03(b), Alternative II.

Commentary.

A complaint frequently lodged against the all at-large council system is that a majority of the council may live in the same area of the city. This may give rise to questions concerning the equitable distribution of services with allegations that particular sections receive partial treatment. This objection can be met while still maintaining a council elected at-large by establishing districts of equal population and requiring that one council member reside in each district.

Although this alternative builds geographical representation into an at-large system, depending upon the local situation, it may be subject to the same objections under § 2 and § 5 of the Voting Rights Act as Alternative I.

Alternative III – Option A - Mixed At-Large and Single Member District System; Mayor Elected by the Council

The council shall be composed of [odd number] of council members elected by the voters of the city at large and one member from each of the even-numbered council districts elected by the voters of those districts, as provided in Article VI. The mayor shall be elected from among the at-large members as provided in § 2.03(b), Alternative I [specifying that the mayor is an at-large member].

Alternative III – Option B – Mixed At-Large and Single Member District System; Mayor Elected Separately

The council shall be composed of [even number] members elected by the voters of the city at large and one member from each of the even-numbered council districts elected by the voters of those districts, as provided in Article VI. The mayor shall be elected as provided in § 2.03(b), Alternative II.

Commentary.

The mixed system for a council with members elected at large and members elected by and from districts has become increasingly popular since the U. S. Department of Justice approved it as a method of electing the city council that is compliant with the requirements of the Voting Rights Act. This makes the mixed method suitable in places where the at-large system has been challenged but where change to a single-member district system is opposed.

The mixed system combines the citywide perspective of the at-large council members with the local concerns and accountability of district council members. It can allow minorities who live in

concentrated areas to influence or even determine the outcome of elections in their districts.

A problem can arise in mixed systems when at-large council members consider their position to be superior to that of district members and are perceived as rivals to the mayor. To prevent this, at-large and district council members should have equal status with respect to offices, services, and length of terms.

Local preference should decide the ratio of at-large to district members. Opinion ranges from favoring a majority being elected at large to a majority being elected by and from districts. However, for jurisdictions concerned about scrutiny by the U. S. Department of Justice or the courts under either § 2 or § 5 of the Voting Rights Act, precedent shows a clear preference for the majority of the council to be elected by and from districts.

Alternative IV – Single-Member District System

The council shall be composed of an even number of members each of whom shall be elected by district by the voters in that district. The mayor shall be elected in accordance with the provisions of § 2.03(b), Alternative II.

Commentary.

If communities adopt the district system, the mayor should be elected separately by the voters of the city at large and not chosen by and from the council. This provides a necessary at-large element in an otherwise all district system.

The growing recognition that membership on councils should represent all racial and ethnic groups more adequately has spurred increased use of the single-member district system. With racial minorities concentrated in particular sections of the city, it is easier to elect minority council members. Also, because district campaigns cost substantially less than citywide campaigns, single-member districts can open the way for greater diversity among candidates. Citizens feel closer to district elected council members, whom they can hold responsible for addressing their community concerns.

In cities where courts have found that the at-large method of electing the city council violates the Voting Rights Act, the Justice Department has regularly approved the single-member district system as a replacement.

The single-member system has drawbacks. An inherent problem is the danger that district elected members will subordinate citywide concerns to parochial problems. Single-member systems also have potential for the classic problem of "log-rolling" or vote swapping. Whenever districts are used, the drawing of district lines to provide "fair and equal" districts is of utmost importance and may involve litigation. Section 6.03 provides districting procedures and criteria designed to prevent gerrymandering and unequal districts, which are unconstitutional under the one person, one vote doctrine.

Section 2.03. Mayor.

(a) Powers and Duties. The mayor shall be a voting member of the city council and shall attend and preside at meetings of the council, represent the city in intergovernmental relationships, appoint with the advice and consent of the council the members of citizen advisory boards and commissions, present an annual state of the city message, appoint

the members and officers of council committees, assign subject to the consent of council agenda items to committees, and perform other duties specified by the council. The mayor shall be recognized as head of the city government for all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties.

(b) Election -Alternative I – Mayor Elected by the Council. The city council shall elect from among its members officers of the city who shall have the titles of mayor and deputy mayor, each of whom shall serve at the pleasure of the council. The deputy mayor shall act as mayor during the absence or disability of the mayor.

Alternative II – Mayor Elected At Large. At each regular election the voters of the city shall elect a mayor at large for a term of [the same term as other council members] years. The council shall elect from among its members a deputy mayor who shall act as mayor during the absence or disability of the mayor and, if a vacancy occurs, shall become mayor for the remainder of the unexpired term.

Commentary.

(a) The office of mayor in cities having the council-manager form assumes a different character from city to city depending upon local political, economic, and social conditions. This variation has meant that the office is not well understood, and its potential has too often gone unrecognized.

While the mayor of a council-manager city is not an executive as in the mayor-council form, he or she is uniquely positioned to be the political and policy leader of the city. As the presiding officer of the council and ceremonial head of the city, the mayor is the most conspicuous official of the city. Freedom from executive responsibilities for the day-to-day municipal operations allows the mayor to focus attention on major policy issues and important facilitative activities.

The mayor fills three facilitative roles that offer enormous leadership opportunities. First, the mayor may coordinate the activities of other officials by providing liaison between the city manager and the council, fostering a sense of cohesion among council members, and educating the public about the needs and prospects of the city. Second, the mayor may facilitate policy guidance through setting goals for the council and advocating the adoption of policies that address the city's problems. Third, the mayor is an ambassador who promotes the city and represents it in dealing with other governments as well as the public.

The specific responsibilities of the mayor listed in the *Model* enhance the mayor's leadership position. The traditional responsibility of presiding at council meetings allows the mayor to set the tone for city government and help the council make decisions. Designation of the mayor as intergovernmental representative reflects the increased importance of relationships with other local governments as well as with the state and federal governments. Mayoral appointment of boards and commissions with council advice and consent, and of the membership of council committees, creates the opportunity for purposeful balanced representation and can be used to forge coalitions and tap into networks of community activity.

Finally, the mayor delivers the state of the city message. When the state of the city message includes the setting out of needs and goals for the city, it should reflect the thinking of the council and information provided by the staff, as well as the mayor's own priorities. In presenting the state of the city message, the mayor acts as spokesperson, educator, team leader, goal setter, and policy advocate. To avoid confusion, the time of delivery of the message should be sufficiently distanced from the presentation of the budget by the manager.

(b) As with mayoral responsibilities, the method of election of the mayor has implications for office effectiveness. The *Model* provides two alternative methods for electing the mayor. A community's choice of election method depends on local preference and tradition and to some extent on the method chosen to elect the council (see Article VI).

Many communities feel that local policy leadership can best function when a cohesive team of council members chooses its leader as mayor. These cities use Alternative I, election of the mayor by and from the council, and thus avoid the possibility of conflict between the mayor and the council majority. Such an approach may be best suited for cities with at-large council elections. In cities with councils elected from districts, council selection of the mayor presents the mayor with conflicting roles—district and citywide.

Cities that provide for council selection of the mayor should avoid two practices which diminish the prospect of effective leadership. First is rotation of the office of mayor among members. This approach may hinder the emergence of a respected leader by preventing any one member from acquiring experience and increasing competence in the exercise of leadership skills. It can also mean that the true leader of the council is not the mayor, which may create a misperception of inside dealing and secret manipulation. The second practice is to automatically designate as mayor the council member who receives the largest number of votes. This awkward approach prevents the council from choosing its leader and does not give voters full knowledge for which office—council member or mayor—they were casting votes.

More than half of the cities operating with the council-manager form use the direct election at-large alternative (Alternative II). Many cities, particularly larger ones, believe that this method increases the potential for mayoral leadership by giving the mayor a citywide popular support base. This is particularly important when all or most of the council members are elected from districts. A potential disadvantage of this method is that the mayor may have views that diverge widely from those of a majority of the council on some important issues.

Whatever the method of election or the strength of the mayor's leadership role, the mayor is preeminently a legislator, a member, and leader of the council; the mayor is not an executive. However, the office may require some special staff support. Whatever arrangements are made for support either through the city manager or staff in the mayor's office should be consistent with two premises. First, the mayor should not encroach on the executive responsibilities of the manager. Second, the mayor and council collectively, as a body, oversee the operations of the city by the manager.

Communities should avoid granting special voting status to the mayor (e.g., vote on council only to make or break a tie). Such power will likely impede rather than enhance the mayor's capacity to lead. Similarly, giving the mayor veto power in a council-manager city cannot help but confuse his or her role with that of the executive mayor in a mayor-council city.

No structural arrangement for government will insure effective mayoral leadership. The person who occupies the office must understand the nature of the job—its possibilities, interdependencies, and limitations—and have the personal inclination, energy, and talent to exercise necessary leadership. Without that, no amount of structural support will produce a leader. However, the method of selection and the statement of responsibilities provided in the charter should help insure the selection of a capable person with recognized leadership abilities who will make a significant contribution to the operation of the city.

Section 2.04. Compensation; Expenses.

The city council may determine the annual salary of the mayor and council members by ordinance, but no ordinance increasing such salary shall become effective until the date of commencement of the terms of council members elected at the next regular election. The mayor and council members shall receive their actual and necessary expenses incurred in the performance of their duties of office.

Commentary.

Under the *Model*, council members are part-time officials and do not direct city departments. Council salary level depends on a variety of factors specific to each community, including the part-time nature of the position and the emphasis on policy-making rather than administration. The city should reimburse council members for expenses incurred in performing their duties, e.g., travel to the state capital to testify on behalf of the city.

The *Model* rejects the setting of the actual amount of compensation in the charter except for the salary of the first council after the charter goes into effect (see § 9.05(f)). The delay in the effective date of any salary increases provides ample protection.

The city should provide extra compensation for the mayor because, in addition to regular responsibilities as a council member, the mayor has intergovernmental, ceremonial, and city-related promotional responsibilities.

Section 2.05. Prohibitions.

(a) Holding Other Office. Except where authorized by law, no council member shall hold any other elected public office during the term for which the member was elected to the council. No council member shall hold any other city office or employment during the term for which the member was elected to the council. No former council member shall hold any compensated appointive office or employment with the city until one year after the expiration of the term for which the member was elected to the council, unless granted a waiver by the Board of Ethics.

Nothing in this section shall be construed to prohibit the council from selecting any current or former council member to represent the city on the governing board of any regional or other intergovernmental agency.

(b) Appointments and Removals. Neither the city council nor any of its members shall in any manner control or demand the appointment or removal of any city administrative officer or employee whom the city manager or any subordinate of the city manager is empowered to appoint, but the council may express its views and fully and freely discuss with the city manager anything pertaining to appointment and removal of such officers and employees.

(c) Interference with Administration. Except for the purpose of inquiries, and investigations under § 2.09, the council or its members shall deal with city officers and employees who are subject to the direction and supervision of the city manager solely through the city manager, and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately.

Commentary.

(a) This provision prohibits council members from concurrently holding other elective office, such as state legislator, as occurs in some states. Also prohibited is holding any other city office or employment during one's council term or for one year after leaving office. These provisions are designed to avoid conflict of interest situations. The charter is specific, however, that these prohibitions do not restrict any current or former officeholder from service on the boards of regional or other intergovernmental agencies. Such service is particularly valuable in accomplishing the objectives of intergovernmental cooperation.

(b) and (c) The prohibition against interference by council members in the appointment and removal of employees and in the administration of city programs does not include the broad language of earlier editions of the *Model* because it was considered too rigid and unrealistic. This provision, while expressing the general policy of noninterference, does not exclude communication between council members and the manager on questions of appointment and removal. The manager may seek advice from the council regarding appointments. Council members are strictly prohibited from giving orders to city officers or employees. However, the prohibition against interference with administration does not prevent council members from making inquiries of department heads or employees for the purpose of obtaining information needed by them in the discharge of their duties including response to constituent requests. Information provided to one council member should be shared with the entire council as warranted. The council and manager should define the parameters for such requests and establish reasonable boundaries. In some cities, automated information systems make information on aspects of departmental operations readily available to council members on computer terminals.

Section 2.06. Vacancies; Forfeiture of Office; Filling of Vacancies.

(a) Vacancies. The office of a council member shall become vacant upon the member's death, resignation, or removal from office or forfeiture of office in any manner authorized by law.

(b) Forfeiture of Office. A council member shall forfeit that office if the council member:

- (1) Fails to meet the residency requirements,
- (2) Violates any express prohibition of this charter,
- (3) Is convicted of a crime involving moral turpitude, or
- (4) Fails to attend three consecutive regular meetings of the council without being excused by the council.

(c) Filling of Vacancies. A vacancy in the city council shall be filled for the remainder of the unexpired term, if any, at the next regular election following not less than sixty days upon the occurrence of the vacancy, but the council by a majority vote of all its remaining members shall appoint a qualified person to fill the vacancy until the person elected to serve the remainder of the unexpired term takes office. If the council fails to do so within thirty days following the occurrence of the vacancy, the election authorities shall call a special election to fill the vacancy, to be held not sooner than ninety days and not later than 120 days following the occurrence of the vacancy, and to be otherwise governed by law. Notwithstanding the requirement in § 2.11(c), if at any time the membership of the council is reduced to less than _____, the remaining members may by majority action

appoint additional members to raise the membership to _____.

Commentary.

The section specifies the events or conditions, which create a vacancy, the grounds for forfeiture of office, and the manner by which the council shall fill vacancies.

Subsection (b)(3) requires forfeiture of office for crimes involving "moral turpitude." This is a legal standard that in most jurisdictions means the crime – felony or misdemeanor – violates community standards of morality and involves an element of knowing intent by the perpetrator. Court findings include *In re Flannery*, 334 Or. 224 (2002) (misrepresenting address in renewing driver license to obtain valid license to rent a car was not a crime involving moral turpitude); *Klontz v. Ashcroft*, 37 Fed. Appx. 259 (9th Cir. 2002) (petty theft and grand theft are both crimes of moral turpitude); *Antorietto v. Regents of the University of California*, 2002 WL 1265552 (Cal. App. 4 Dist. June 7, 2002) (misuse of university funds and fraudulent diversion of donor funds intended for the university are crimes that involve moral turpitude). Another approach focuses on felonies, as in Kansas City's charter, which reads: "No member of the council shall, during the term for which he is elected, be found guilty or enter a plea of guilty or nolo contendere to a felony under the laws of the United States or of any state, even if subsequently followed by the suspended imposition of the sentence."

The council shall temporarily fill vacancies until the next regular election, when the voters will fill such vacancies for the remainder of the term (unless that election occurs within sixty days of the vacancy, in which case the candidates would have insufficient time to file). The provision calls for a special election if the council fails to fill a vacancy within thirty days. This provision should insure that the council will act, but in the event of a deadlock a special election will resolve the situation.

Finally, the section provides for filling vacancies by council action even if the membership falls below the quorum otherwise required for council action by § 2.11(c).

Section 2.07. Judge of Qualifications.

The city council shall be the judge of the election and qualifications of its members, and of the grounds for forfeiture of their office. In order to exercise these powers, the council shall have power to subpoena witnesses, administer oaths and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in one or more newspapers of general circulation in the city at least one week in advance of the hearing.

Commentary.

This section makes council the judge of qualifications for office and of grounds for forfeiture. It provides procedural safeguards to protect a member charged with conduct constituting grounds for forfeiture. The provision authorizing the council to set additional standards for the conduct of its members empowers the council to impose on itself the highest possible ethical standards.

Section 2.08. City Clerk.

The city council or the city manager shall appoint an officer of the city who shall have the

title of city clerk. The city clerk shall give notice of council meetings to its members and the public, keep the journal of its proceedings and perform such other duties as are assigned by this charter or by the council or by state law.

Commentary.

See §§ 2.15 and 2.16 for other duties assigned to the city clerk. In a number of states, certain statutory duties may be assigned to the city clerk, even in cities operating with their own charters.

Section 2.09. Investigations.

The city council may make investigations into the affairs of the city and the conduct of any city department, office, or agency and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. Failure or refusal to obey a lawful order issued in the exercise of these powers by the council shall be a misdemeanor punishable by a fine of not more than \$_____, or by imprisonment for not more than _____ or both.

Commentary.

This section gives the council, but not the manager, the power to make investigations. The manager has the power to appoint, remove, and suspend officers, but it is inappropriate for the manager to have the power to subpoena witnesses and compel production of evidence.

Section 2.10. Independent Audit.

The city council shall provide for an independent annual audit of all city accounts and may provide for more frequent audits as it deems necessary. Such audits shall be carried out in accordance with § 5.12.

Commentary.

The necessity for annual independent audits of the city's financial affairs has long been accepted. This section authorizes and charges the council to conduct them.

Section 2.11. Procedure.

(a) Meetings. The council shall meet regularly at least once in every month at such times and places as the council may prescribe by rule. Special meetings may be held on the call of the mayor or of _____ or more members and, whenever practicable, upon no less than twelve hours' notice to each member. Except as allowed by state law, all meetings shall be public; however, the council may recess for the purpose of discussing in a closed or executive session limited to its own membership any matter which would tend to defame or prejudice the character or reputation of any person, if the general subject matter for consideration is expressed in the motion calling for such session and final action on such motion is not taken by the council until the matter is placed on the agenda.

(b) Rules and Journal. The city council shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings. This journal shall be a public record.

(c) Voting. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. _____ members of the council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the council. No action of the council, except as otherwise provided in the preceding sentence and in § 2.06(c), shall be valid or binding unless adopted by the affirmative vote of _____ or more members of the council.

Commentary.

This section sets forth what are, for the most part, standardized and well accepted procedural rules to govern the official action of the council. The frequency of meetings can, of course, be suited to the needs of the particular city. The section contains the important, standard protection that meetings must be public and that a journal of proceedings be kept as a public record. Most states have open meeting laws which specify the circumstances when closed or executive sessions may be held; such meetings are sometimes necessary for effective council functioning. This charter and state law contain ample safeguards to assure open meetings. All council actions require majority vote, except actions to adjourn, to compel attendance of members in the absence of a quorum, and to appoint additional members if the membership falls below a majority of the total authorized membership as provided in § 2.06(c).

Section 2.12. Action Requiring an Ordinance.

In addition to other acts required by law or by specific provision of this charter to be done by ordinance, those acts of the city council shall be by ordinance which:

- (1) Adopt or amend an administrative code or establish, alter, or abolish any city department, office, or agency;
- (2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
- (3) Levy taxes;
- (4) Grant, renew, or extend a franchise;
- (5) Regulate the rate charged for its services by a public utility;
- (6) Authorize the borrowing of money;
- (7) Convey or lease or authorize the conveyance or lease of any lands of the city;
- (8) Regulate land use and development;
- (9) Amend or repeal any ordinance previously adopted; or
- (10) Adopt, with or without amendment, ordinances proposed under the initiative power.

Acts other than those referred to in the preceding sentence may be done either by ordinance or by resolution.

Commentary.

This section assures that the enumerated types of council action be taken only after compliance with all the procedural safeguards required for passage of an ordinance by the succeeding sections.

Other subjects requiring an ordinance are not mentioned here because the requirement is specifically stated elsewhere in the charter. These include adoption of codes of technical regulations (§ 2.15), appropriation and revenue ordinances (§ 5.06), supplemental and emergency appropriations and reduction of appropriations (§ 5.07), and creation of a charter commission or proposal of charter amendments (§ 8.01).

Council may act via ordinance or resolution on matters other than those enumerated in this section or as required by law or by specific provision in the charter to be by ordinance. This does not preclude motions relating to matters of council procedure, which may involve even less formality than resolutions.

Section 2.13. Ordinances in General.

(a) Form. Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject, which shall be clearly expressed in its title. The enacting clause shall be "The city of _____ hereby ordains . . ." Any ordinance which repeals or amends an existing ordinance or part of the city code shall set out in full the ordinance, sections or subsections to be repealed or amended, and shall indicate matters to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matters by underscoring or by italics.

(b) Procedure. Any member at any regular or special meeting of the council may introduce an ordinance. Upon introduction of any ordinance, the city clerk shall distribute a copy to each council member and to the city manager, shall file a reasonable number of copies in the office of the city clerk and such other public places as the council may designate, and shall publish the ordinance together with a notice setting out the time and place for a public hearing thereon and for its consideration by the council. The public hearing shall follow the publication by at least seven days, may be held separately or in connection with a regular or special council meeting and may be adjourned from time to time; all persons interested shall have an opportunity to be heard. After the hearing, the council may adopt the ordinance with or without amendment or reject it, but if it is amended as to any matter of substance, the council may not adopt it until the ordinance or its amended sections have been subjected to all the procedures herein before required in the case of a newly introduced ordinance. As soon as practicable after adoption, the clerk shall have the ordinance and a notice of its adoption published and available at a reasonable price.

(c) Effective Date. Except as otherwise provided in this charter, every adopted ordinance shall become effective at the expiration of 30 days after adoption or at any later date specified therein.

(d) "Publish" Defined. As used in this section, the term "publish" means to print in the contemporary means of information sharing, which includes but is not limited to, one or more newspapers of general circulation in the city, and, if available, in a web site: (1) the ordinance or a brief summary thereof, and (2) the places where copies of it have been filed and the times when they are available for public inspection and purchase at a reasonable price.

Commentary.

This section dispenses with the unnecessary and cumbersome requirements of a full reading of all ordinances and publication of their full text both before and after adoption. Distribution of a copy to each council member obviates the need for a full reading. Permitting the printing of a brief summary, together with notice of the times and places where copies are available for public inspection, simplifies publication. Further simplification occurs in §§ 2.14 and 2.15, which contain special provisions for expeditious handling of emergency ordinances and for adoption by reference of standard codes of technical regulations.

The section retains the basic safeguards of a public hearing following notice by publication, and a second publication with notice of adoption. It does not go so far as charters that dispense with publication or that permit adoption at the same meeting at which a non-emergency ordinance is introduced. It retains protective features deemed necessary for full and careful consideration. Section 2.14 provides sufficient leeway for emergency situations.

Section 2.14. Emergency Ordinances.

To meet a public emergency affecting life, health, property or the public peace, the city council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its services or authorize the borrowing of money except as provided in § 5.07(b). An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least _____ members shall be required for adoption. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance except one made pursuant to § 5.07(b) shall automatically stand repealed as of the sixty-first day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

Commentary.

To facilitate timely action, the charter permits an extraordinary majority to introduce and adopt such ordinances at the same meeting. Ordinances passed pursuant to this section may also have an immediate effective date.

Section 2.15. Codes of Technical Regulations.

The city council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally except that:

- (1) The requirements of § 2.13 for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical

- regulations as well as of the adopting ordinance, and
- (2) A copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the city clerk pursuant to § 2.16(a).

Copies of any adopted code of technical regulations shall be made available by the city clerk for distribution or for purchase at a reasonable price.

Commentary.

This provision permits adoption of standard and often lengthy, detailed, and technical regulations, such as building and sanitary codes, by an ordinance which simply incorporates and adopts the code by reference. Publication of the adopting ordinance satisfies publication requirements. The adopting ordinance should indicate the nature of the code. The council is not required to include all such technical codes in the general city code pursuant to § 2.15. This approach minimizes burden and expense while at the same time preserving the essential safeguards of the general ordinance procedure of § 2.12.

Section 2.16. Authentication and Recording; Codification; Printing of Ordinances and Resolutions.

(a) Authentication and Recording. The city clerk shall authenticate by signing and shall record in full in a properly indexed book kept for the purpose all ordinances and resolutions adopted by the city council.

(b) Codification. Within three years after adoption of this charter and at least every ten years thereafter, the city council shall provide for the preparation of a general codification of all city ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the council by ordinance and shall be published, together with this charter and any amendments thereto, pertinent provisions of the constitution and other laws of the state of _____, and such codes of technical regulations and other rules and regulations as the council may specify. This compilation shall be known and cited officially as the _____ city code. Copies of the code shall be furnished to city officers, placed in libraries, public offices, and, if available, in a web site for free public reference and made available for purchase by the public at a reasonable price fixed by the council.

(c) Printing of Ordinances and Resolutions. The city council shall cause each ordinance and resolution having the force and effect of law and each amendment to this charter to be printed promptly following its adoption, and the printed ordinances, resolutions and charter amendments shall be distributed or sold to the public at reasonable prices as fixed by the council. Following publication of the first _____ city code and at all times thereafter, the ordinances, resolutions and charter amendments shall be printed in substantially the same style as the code currently in effect and shall be suitable in form for integration therein. The council shall make such further arrangements as it deems desirable with respect to reproduction and distribution of any current changes in or additions to the provisions of the constitution and other laws of the state of _____, or the codes of technical regulations and other rules and regulations included in the code.

Commentary.

Subsections (a) and (c) of this section state essential procedures for maintaining legally

authenticated records of all ordinances and resolutions and for making them available to the public.

The merits of the general codification provided for in subsection (b) speak for themselves. The *Model* provides for inclusion of pertinent parts of the constitution and state statutes, thus envisioning a city code to which people may turn for all state and local legislation governing the city. This contrasts to the situation still existing in many cities where much of this legislation, particularly state laws of limited application, are nowhere collected and are often out of print, unavailable, or difficult to find.

Article III CITY MANAGER

Introduction.

In the council-manager plan, the city manager is continuously responsible to the city council, the elected representatives of the people.

Section 3.01. Appointment; Qualifications; Compensation.

The city council by a majority vote of its total membership shall appoint a city manager for an indefinite term and fix the manager's compensation. The city manager shall be appointed solely on the basis of education and experience in the accepted competencies and practices of local government management. The manager need not be a resident of the city or state at the time of appointment, but may reside outside the city while in office only with the approval of the council.

Commentary.

Six of the twelve items in the Code of Ethics established by the International City/County Management Association (ICMA) for members of the city management profession refer to the manager's relationships to the popularly elected officials:

Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.

Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.

Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement municipal policies adopted by elected officials.

Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with members [of ICMA, i.e., city managers]. Refrain from all political activities, which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body [including the mayor].